

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
State/Territory: RHODE ISLAND

REQUIREMENTS FOR ADVANCE DIRECTIVES UNDER STATE PLANS FOR MEDICAL ASSISTANCE

The following is a written description of the law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives. If applicable States should include definitions of living will, durable power of attorney for health care, durable power of attorney, witness requirements, special State limitations on living will declarations, proxy designation, process information and State forms, and identify whether State law allows for a health care provider or agent of the provider to object to the implementation of advance directives on the basis of conscience.

The only Rhode Island laws governing the area of advance directives are Title 23, Chapter 4.10 entitled *Health Care Power of Attorney*, and Title 23, Chapter 4.11 entitled *Rights of the Terminally Ill Act*. Chapter 4.10 concerns the use of a statutory form of durable power of attorney and Chapter 4.11 establishes a procedure whereby terminally ill persons could have life-sustaining procedures withheld or withdrawn. This description is provided in summary of and not in substitution for a careful reading of the statutory provisions cited herein.

Statutory Form Durable Power of Attorney for Health Care

The Statutory Form Durable Power of Attorney for Health Care gives the agent full power and authority, except to the extent that there are limits provided by law, to make health care decisions consistent with the desires of the individual executing the document. The power is subject to any statement of desires and any limitation included in the document by the principal.

The person executing the durable power of attorney for health care must be at least eighteen (18) years of age and a resident of the state of Rhode Island. Notwithstanding the document, the principal retains the right to make medical and other health care decisions as long as informed consent can be given with respect to the particular decision and no treatment may be given or health care stopped or withheld over the objection by the principal at the time.

For purposes of the document "health care decision" means consent, refusal of consent, or withdrawal of consent to any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition.

A court can take away the power of the agent to make health care decisions if the agent (1) authorizes anything that is illegal, (2) acts contrary to the known desires of the principal, or (3) where the desires of the principal are unknown, does anything that is clearly contrary to the best interests of the principal.

Unless specified for a specific period the durable power of attorney for health care exists until revoked by the principal and the agent's power and authority cease upon death of the principal. The principal may revoke the authority of the agent by notifying the agent or the treating doctor, hospital, or other health care provider orally or in writing of the revocation.

The agent has the right to examine and consent to the disclosure of medical records unless the right is limited by the document.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: RHODE ISLAND

REQUIREMENTS FOR ADVANCE DIRECTIVES UNDER STATE PLANS FOR MEDICAL ASSISTANCE

The document must be witnessed by two (2) qualified witnesses who are present when the principal signs or acknowledges signing the document. Any additional pages attached to the form must be individually signed and dated at the same time the principal dates and signs the durable power of attorney. None of the following may be used as a witness: (1) the person designated by the principal as the agent or alternate agent, (2) a health care provider, (3) an employee of a health care provider, (4) the operator of a community care facility, (5) an employee of an operator of a community care facility.

A declaration, under penalty of perjury, must be made by one or the other of the witnesses that the principal is known to the witness; that the principal signed or acknowledged the durable power of attorney in the presence of the witness and appeared of sound mind and under no duress; that the witness is not the person appointed as attorney in fact; that the witness is not one of the above identified as ineligible to be a witness. An additional declaration, under penalty of perjury, must be made by one or the other of the witnesses that the witness is not related to the principal by blood, marriage, adoption, and, to the best of the witness's knowledge, the witness is not entitled to any part of the estate of the principal under an existing will or by operation of law.

Rights of the Terminally Ill Act

This Act recognizes the right of an adult person to make a written declaration instructing his/her physician to withhold or withdraw life-sustaining procedures in the event of a terminal condition and establishes a procedure whereby terminally ill persons can have life-sustaining procedures withheld or withdrawn.

A competent individual eighteen (18) years of age or older may at any time execute a declaration governing the withholding or withdrawal of life-sustaining procedures. The declaration must be signed by the declarant, or another at the declarant's direction in the presence of two (2) subscribing witnesses who are not related to the declarant by blood or marriage. A declaration has operative effect only when (1) the declaration is communicated to the attending physician, and (2) the declarant is determined by the attending physician to be in a terminal condition, and (3) the declarant is unable to make treatment decisions.

TN No. 91-19  
Supersedes  
TN No. NEW

Approval Date: 4/13/92

Effective Date: 12/01/91

HCFA ID: 7982E